

229610



RICHARD BAR
BRENDAN COLLINS
STEVEN JOHN FELLMAN
EDWARD D. GREENBERG
KATHARINE FOSTER MEYER
DAVID K. MONROE
TROY A. ROLF
DAVID P. STREET
KEITH G. SWIRSKY
THOMAS W. WILCOX
CHRISTOPHER B. YOUNGER *

SVETLANA V. LYUBCHENKO

ROBERT N. KHARASCH*

* OF COUNSEL
* NOT ADMITTED IN DC

FEE RECEIVED

MAY 25 2011

**SURFACE
TRANSPORTATION BOARD**

MINNESOTA OFFICE
700 TWELVE OAKS CENTER DRIVE, SUITE 700
WAYZATA, MN 55391
TELEPHONE: 952.449.8817 FACSIMILE: 952.449.0614

WRITER'S DIRECT E-MAIL ADDRESS
TWILCOX@GKGLAW.COM

WRITER'S DIRECT DIAL NUMBER
202-342-5248

May 25, 2011

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings

MAY 25 2011

Part of
Public Record

FILED

MAY 25 2011

**SURFACE
TRANSPORTATION BOARD**

Re: STB Docket No. FD-35524, *Canexus Chemicals Canada L.P. v.
BNSF Railway Company, Request for Order Compelling
Establishment of Common Carrier Rates*

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding please find the original and ten (10) copies of the Request for Order Compelling Establishment of Common Carrier Rates of Canexus Chemicals Canada, L.P. ("Canexus"). Please note that Canexus has asked the Board for EXPEDITED CONSIDERATION of this Request, since the common carrier rates it is seeking to compel BNSF Railway to establish must be in effect on July 1, 2011 for the reasons described in the Request.

A check in the amount of \$200 is enclosed to cover the applicable filing fee. An extra copy of this filing is also included to be stamped and returned to the undersigned.

Please feel free to contact me if you have any questions.

Sincerely,

Thomas W. Wilcox

Counsel for Canexus Chemicals Canada, L.P.

Enclosure

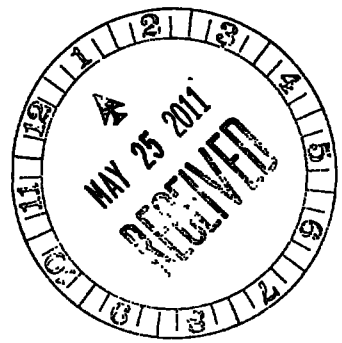
cc: Counsel for BNSF Railway

FEE RECEIVED

MAY 25 2011

**SURFACE
TRANSPORTATION BOARD**

EXPEDITED ACTION REQUESTED



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CANEXUS CHEMICALS
CANADA L.P.
100 Amherst Ave.,
North Vancouver, B.C., V7H 1S4
Canada

Complainant,

v.

BNSF RAILWAY COMPANY
2650 Lou Menk Drive
Fort Worth, TX 76131-2830

Defendant

ENTERED
Office of Proceedings

MAY 25 2011

Part of
Public Record

Docket No. FD-35524

FILED

MAY 25 2011

**SURFACE
TRANSPORTATION BOARD**

**REQUEST FOR AN ORDER COMPELLING
ESTABLISHMENT OF COMMON CARRIER RATES**

FILED

MAY 25 2011

**SURFACE
TRANSPORTATION BOARD**

FEE RECEIVED

MAY 25 2011

**SURFACE
TRANSPORTATION BOARD**

Thomas W. Wilcox
Edward D. Greenberg
Svetlana Lyubchenko
GKG Law, P.C.
1054 31st Street NW, Suite 200
Washington, D.C. 20007
Tel: (202) 342-5248
Fax: (202) 342-5222

Dated: May 25, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**CANEXUS CHEMICALS
CANADA L.P.
100 Amherst Ave.,
North Vancouver, B.C., V7H 1S4
Canada**

Complainant,

v.

**BNSF RAILWAY COMPANY
2650 Lou Menk Drive
Fort Worth, TX 76131-2830**

Defendant

Docket No. FD-35524

**REQUEST FOR AN ORDER COMPELLING
ESTABLISHMENT OF COMMON CARRIER RATES**

COMES NOW, Canexus Chemicals Canada, L.P. ("Canexus"), pursuant to 49 U.S.C. §11701 and 49 C.F.R. Part 1111¹, and submits to the Surface Transportation Board ("STB" or "Board") this Request for an Order Compelling Establishment of Common Carrier Rates ("Request"). This Request asks the Board to immediately compel BNSF Railway Company ("BNSF") to establish, effective July 1, 2011, common carrier

¹ The Board's regulations and decisions categorize requests for orders compelling the establishment of a common carrier rate as a type of formal complaint. 49 CFR §1002.2(56)(vi). STB Finance Docket No. 35219, Union Pacific Railroad Company – Petition for Declaratory Order, (STB Served June 11, 2009) at 6, fn 29; STB Ex Parte No. 542 (Sub – No.4) *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services – 2002 New Fees*, (STB Served August 22, 2002).

rates and service terms for the transportation of chlorine from (1) a chlor alkali (caustic soda, hydrochloric acid and chlorine) production facility owned and operated by Canexus in North Vancouver, British Columbia and (2) Marshall, Washington, which is in the vicinity of a railcar storage facility operated by Canexus' United States operating affiliate, Canexus U.S. Inc. ("Canexus U.S."), in Belmont, Washington, to the established rail interchange between BNSF and the Union Pacific Railroad Company ("UP") in Kansas City, Missouri ("Kansas City Interchange"). Such common carrier rates are necessary to enable deliveries of chlorine originating at these two locations to be made by UP from the Kansas City Interchange to final destinations served by UP in Texas, Illinois and Arkansas pursuant to a confidential rail transportation contract between Canexus and UP. As set forth in more detail below, BNSF's refusal of Canexus' request to establish rates and service terms for this transportation beyond June 30, 2011 violates 49 U.S.C. §§11101(a), 11101(b), 49 C.F.R. Part §1300, and established Board precedent. The Board should therefore immediately issue an order compelling BNSF to provide the requested rates and terms. In support hereof, Canexus states as follows:

IDENTITY OF THE PARTIES

1. Canexus is a privately owned limited partnership with offices in North Vancouver, British Columbia, Canada. Canexus manufactures and markets chlor alkali products at its main production facility located in North Vancouver ("North Vancouver Facility"). The North Vancouver Facility produces for sale approximately 170,000 tons of chlorine per year, all of which must be transported to the customers of Canexus and Canexus U.S. - the latter which handles the sale and distribution of the chlorine in the United States - by railroad. The chlorine is transported in specialized rail tank cars

supplied by Canexus. Canexus is the corporate entity with responsibility for arranging rail transportation on behalf of itself and Canexus U.S.

2. Canexus U.S. operates a railcar storage facility in Belmont, Washington, which is used to store loaded chlorine railcars from time to time before they are transported to end user customers. ("Belmont Facility"). The Belmont Facility is located on the tracks of the Washington and Idaho Railway, Inc., which, in turn, is physically connected to only BNSF at Marshall, Washington.

3. BNSF is a common carrier by railroad and engages in the transportation of property in interstate and intrastate commerce. BNSF is subject to the provisions of the ICC Termination Act of 1995 (49 U.S.C. §§ 10101 *et seq.*) and to the jurisdiction of this Board with regards to its interstate rail transportation service.

JURISDICTIONAL STATEMENT

4. The Board has jurisdiction over this Request pursuant to 49 U.S.C. §§10501, 11101 and 11701.

MATERIAL FACTS

5. The North Vancouver Facility is physically connected to the Canadian National Railway ("CN"), which, in addition to providing line haul transportation services, also provides switching services between the North Vancouver Facility and interchanges with Canadian Pacific Railway ("CPR") and BNSF in Canada pursuant to a mandatory reciprocal switching arrangement under Canadian law and regulations.

6. A portion of BNSF's rail system in the State of Washington extends north across the border of the United States and Canada at Blaine, Washington, into Vancouver, where it connects with the tracks of CN at Brownsville Junction. BNSF

interchanges with CN at this location to pick up loaded Canexus railcars originating at the North Vancouver Facility for delivery to BNSF-served destinations and interchanges with UP and other railroads in the United States.

7. In 2010, Canexus' chlorine was transported from the North Vancouver Facility and from Marshall, Washington to final destinations in Texas, Illinois and Arkansas and numerous other destinations via joint line BNSF and UP movements consisting of transportation by (a) BNSF to UP/BNSF interchanges pursuant to common carrier rates and terms established by BNSF in Price Authority 90096, Implementing Agreement 1063, Amendment 16 ("2010 BNSF Tariff")² and (b) UP pursuant to a confidential rail transportation contract between Canexus and UP covering transportation from BNSF/UP interchanges to UP-served destinations ("UP 2010 Contract"). BNSF and UP billed Canexus separately for their respective portions of the 2010 movements pursuant to Rule 11 of the Association of American Railroads Accounting Rules.³ The 2010 BNSF Tariff contained no restrictions on the use of its rates in joint line service with UP.

8. In the Fall of 2010 BNSF informed Canexus that it intended to revise and renew the 2010 BNSF Tariff and Price Authority 90096 effective January 1, 2011. BNSF later delayed the expiration date of its revisions and renewal until March 15, 2011.

² BNSF Price Authority 90096 and its numerous Implementing Agreements including prior versions are posted on BNSF's website. See http://www.bnsf.com/bnsf.was6/epd/EPDController?txtSrchVal=&SRCHTXT=ALL&PAGE=PRC_AUTH_SRCH_HANDLER&EPDACTION=Search+by+Authority+Number#

³ The common carrier rates and service terms provided by BNSF for the transportation of Canexus' chlorine from the North Vancouver Facility have historically entailed the absorption by BNSF of the reciprocal switch charges assessed by CN. Accordingly, Canexus has been invoiced by and pays one rate to BNSF.

9. The 2010 BNSF Tariff included unrestricted common carrier rates and terms for transporting chlorine from the North Vancouver Facility and from Marshall, Washington to the Kansas City Interchange which Canexus did not use in 2010. However, between January 1, 2011 and March 15, 2011 Canexus shipped 18 carloads of chlorine from the North Vancouver Facility to a customer in Arkansas served exclusively by UP using these rates in combination with common carrier rates established by UP for transportation from the Kansas City Interchange described in paragraph 10 below.

10. Canexus began negotiations with UP in late 2010 concerning new rail transportation contracts to replace the 2010 UP Contract and other contractual arrangements between them. The parties' contracts expired during their negotiations, and on January 14, 2011 UP published UP Tariff 4951, which established common carrier rates for its portion of BNSF/UP Canexus chlorine movements originating in North Vancouver starting January 16, 2011. Tariff 4951 included a rate from the Kansas City Interchange to UP-served destinations in Texas, Illinois and Arkansas.

11. In January, 2011 Canexus orally informed BNSF that it would require common carrier rates to be republished in the revised Price Authority 90096 in 2011 from the North Vancouver Facility and from Marshall to the Kansas City Interchange to be used in conjunction with rates Canexus was negotiating with UP for final delivery from that interchange to customers in Texas, Illinois, and Arkansas. BNSF declined this request, and BNSF further informed Canexus that effective March 16, 2011, it was BNSF's intention to only interchange Canexus' cars of chlorine out of North Vancouver with UP at Portland, Oregon, and to only interchange chlorine cars out of the Belmont Facility with UP at Spokane, Washington via Marshall.

12. After further oral and email requests to BNSF to re-establish non-restricted rates to the Kansas City Interchange were unsuccessful, Canexus submitted to BNSF on March 2, 2011 a written request for the establishment of common carrier rates and service terms pursuant to 49 U.S.C. §11101(b) and 49 C.F.R. §1300.3 for the rail transportation of chlorine from North Vancouver and Marshall to the Kansas City Interchange effective March 16, 2011 to be used in conjunction with rates provided by UP for service to destinations in Texas, Illinois and Arkansas. (Attachment 1).

13. On or around March 3, 2011, Canexus reached an agreement in principle with UP on the contract rates and other terms for the transportation of Canexus' chlorine from the Kansas City Interchange to customers served by UP in Texas, Illinois, and Arkansas in 2011 and additional years.⁴

14. Despite the presence of Tariff 4951, and despite being informed of the pending contract between Canexus and UP, BNSF refused Canexus' written request to reestablish common carrier rates and service terms to the Kansas City Interchange for use in joint line service with UP. After further correspondence between BNSF and Canexus (Attachment 2), BNSF informed Canexus that effective April 8 it would establish "temporary rates" from North Vancouver and from Marshall to the Kansas City Interchange for interchange with UP to destinations in Texas, Illinois, Arkansas, and other UP-served destinations, but only until June 30, 2011. (Attachment 3). The stated purpose of the temporary rates is to "provide Canexus additional time to negotiate a solution with UP" that would require UP to agree that "any chlorine shipments moving

⁴ The parties also reached agreement on contract rates and service terms for UP's portions of joint UP/BNSF movements from other UP/BNSF interchanges, but BNSF has established common carrier rates to those interchanges so they are not at issue.

on BNSF from N. Vancouver or Marshall to final destinations located on UP must be interchanged at Portland or Spokane.” According to the letter, “[i]f after July 1, you anticipate that Union Pacific will not accept such traffic in interchange at these established and reasonable gateways, then your recourse would be to address that situation before the Surface Transportation Board.” The “temporary rates” were published in BNSF Price Authority 90096, Implementing Agreement 5000.

15. Contract discussions between Canexus and UP were eventually concluded in late April, 2011, and rail transportation contracts for transportation in 2011 and subsequent years were executed by both Canexus and UP as of May 24, 2011. One of the contracts includes rates and service terms for the transportation of chlorine originating in North Vancouver and Marshall from the Kansas City Interchange to UP-served destinations in Texas, Illinois, and Arkansas. Canexus informed BNSF that it was finalizing a contract with UP for contract service from the Kansas City Interchange, but BNSF did not change its position and establish common carrier rates from these origins for use in combination with the UP contract rates.

16. Canexus made a proper request for rates and service for the transportation of cars of its chlorine by BNSF to the Kansas City Interchange under 49 U.S.C. §11101(b) and 49 CFR §1300.3. BNSF has not objected to any aspect of the request other than the location where the shipments will be interchanged with UP. BNSF has provided no reasons for its refusal to interchange in Kansas City with UP after June 30, 2011 other than it prefers to interchange with UP in Portland and Spokane, thereby significantly “short hauling” itself for joint line BNSF/UP movements of Canexus’ chlorine. BNSF’s refusal to provide rates and other service terms for the requested

transportation violates 49 U.S.C. §11101(a) and §11101(b) and 49 CFR §1300.3 and established Board precedent governing a railroad's obligation to establish rates for the transportation of chlorine upon request. *See e.g.*, STB Finance Docket No. 35219, *Union Pacific Railroad Company – Petition for Declaratory Order* (STB served June 11, 2009).

17. BNSF's refusal to establish rates from North Vancouver or Marshall to the Kansas City Interchange that can be used for joint line service with UP after June 30, 2011 is also discriminatory because BNSF has transported Canexus' chlorine from North Vancouver to Kansas City in single line service to BNSF-served customers in the Kansas City area pursuant to the common carrier rates and service terms established in Price Authority 90096, Implementing Agreement 5000.

18. Finally, BNSF's refusal to provide rates and service terms for transportation service from the North Vancouver Facility and the Belmont Facility to the Kansas City Interchange after June 30, 2011 despite the presence of a rail transportation contract between Canexus and UP violates 49 U.S.C §11101 and established Board precedent and policy governing rates for segments of joint line railroad movements. *Central Power & Light v. S. Pac., et al*, 1 STB 1059 (1996) ("*Bottleneck I*"); *clarified*, 2 STB 235 (1997) ("*Bottleneck II*"), *aff'd sub nom, Mid American Energy Co. v. STB*, 169 F.3d 1099 (8th Cir. 1999); STB Finance Docket No. 33467, *FMC Wyoming Corp. and FMC Corp. v. Union Pacific Railroad Company* (STB Served December 16, 1997) *aff'd Union Pacific Railroad Co. v Surface Transp. Bd.*, 202 F.3d 337 (D.C. Cir. 2000).

REQUESTED RELIEF

WHEREFORE, Canexus respectfully asks the Board to grant the following relief in response to this Request:

1. The Board should immediately issue an order directing BNSF to show cause in its reply to this Request why BNSF should not establish, effective July 1, 2011, common carrier rates and service terms for shipments of chlorine from the North Vancouver Facility and from Marshall, Washington to the Kansas City Interchange without any restrictions on the use of such rates in combination with contract rates governing transportation by UP to UP-served destinations in Texas, Illinois, and Arkansas, and any additional destinations that might be subsequently added to the contract.

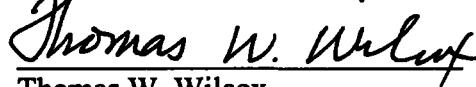
2. The Board should determine, after receiving any additional evidence or information from the parties it determines is necessary, but in any event prior to June 30, 2011 that BNSF has violated 49 U.S.C. §11101(a), §11101(b), 49 C.F.R. Part 1300, and established Board precedent by refusing Canexus' request for rates and service terms for the transportation of chlorine from the North Vancouver Facility and from Marshall, Washington to the Kansas City Interchange to be used in conjunction with contract rates and terms established by UP for final deliveries to UP-served destinations in Texas, Illinois, and Arkansas, effective July 1, 2011; and

3. The Board should immediately issue an order compelling BNSF to establish common carrier rates and service terms for the requested service, effective July 1, 2011.

4. While Canexus believes that the Board's jurisdiction to compel BNSF to establish the requested rate from North Vancouver to The Kansas City Interchange is clear, should the Board ultimately conclude otherwise Canexus requests the alternative relief as to the North Vancouver origin of an order compelling BNSF to supply, effective

July 1, 2011, a common carrier rate for the transportation of Canexus' chlorine from the point at which BNSF's tracks cross into the United States at Blaine, Washington to The Kansas City Interchange.

Respectfully submitted,



Thomas W. Wilcox

Edward D. Greenberg

Svetlana Lyubchenko

GKG Law, PC

1054 31st Street NW, Suite 200

Washington, D.C. 20007

Tel: (202) 342-5248

Fax: (202) 342-5222

*Attorneys for
Canexus Chemicals Canada, L.P.*

May 25, 2011



By E-Mail and Regular Mail

March 2, 2011

Mr. Bradley Wycoff
 Manager Sales
 Industrial Products
 BNSF Railway Company
 1200 D Street
 Bellingham, WA
 98225

Dear Mr. Wycoff

Canexus Chemicals Canada Limited Partnership (Canexus) was advised by BNSF Railway Company ("BNSF") that it would be expiring rates published in BNSF Tariff 90096 covering the transportation of chlorine by BNSF to a wide variety of destinations and interchanges on March 15, 2011. Canexus entered into discussions with BNSF to put new rates into effect for March 16, 2011. As a result of correspondence between the two parties on March 1st, Canexus now understands that BNSF is unwilling to publish rates from Canexus' North Vancouver chlor-alkali plant and from Marshall, WA (near to a Canexus chlorine storage facility) to Kansas City, MO effective with March 16, 2011. Canexus desires to use BNSF's rates in conjunction with Union Pacific Railway (UP) rates Canexus has secured applying from Kansas City to Canexus customers located in the states of Texas, Illinois and Arkansas. Instead, BNSF has indicated that it desires to interchange traffic with UP at either Portland, OR when from North Vancouver, or from Spokane, WA when from Marshall. BNSF's proposal would effectively long-haul UP and for this reason, UP is unwilling to provide rates to those states over these two gateways.

Canexus had approached BNSF several times during the 4th quarter of 2010 seeking BNSF recommendations as to the most appropriate interchange between BNSF and UP for chlorine traffic moving to UP local destinations in TX, IL and AR. BNSF failed to respond to those inquiries. As a result, on January 10, 2011 during a meeting between BNSF and Canexus in North Vancouver, Canexus advised that it could not wait any longer and had selected Kansas City as the most reasonable interchange point for the traffic in question. The decision to use the Kansas City interchange was largely predicated on the fact Canexus had secured rates from UP over this interchange. On February 18, BNSF supplied Canexus with a rate of \$18,980 US per car to apply March 16, 2011 on shipments of chlorine from North Vancouver to Kansas City on a Rule 11 basis signalling to Canexus that BNSF agreed with our selection of interchange points.

As we have indicated to BNSF now on several occasions, Canexus believes that the use of the Kansas City interchange is fair and appropriate for traffic moving under UP Rule 11 rates from Kansas City to destinations in TX, IL and AR and we were frankly stunned when BNSF advised yesterday that it was withdrawing its offer to publish rates to Kansas City. Canexus is actively shipping chlorine now, and anticipates continuing to ship chlorine to customers in TX, IL and AR throughout 2011 and beyond. As a result, Canexus must have rates in place to service these customers.

Accordingly, and in light of BNSF's unwillingness to provide contract rates and service terms applying on chlorine movements to the Kansas City interchange effective with March 16, 2011, Canexus hereby requests, pursuant to 49 U.S.C. §11101, 49 C.F.R. Part 1300, and AAR Interchange Rule 11, that BNSF provide Canexus with common carrier rates and service terms for the transportation of chlorine from North



Vancouver and from Marshall, WA to the Kansas City, MO interchange point between BNSF and UP, to be used in conjunction with rates UP has established for movements of chlorine from its interchange at Kansas City, MO to destination points in TX, IL and AR served by UP. Pursuant to 49 C.F.R. §1300.2 and/or §1300.3, respectively, Canexus requests that BNSF (1) disclose any existing common carrier rates and service terms that would apply to the transportation of Canexus' chlorine described above effective with March 16, 2011; or (2) establish reasonable rates and service terms that will apply to the described transportation effective with March 16, 2011. Canexus also requests that BNSF immediately notify Canexus of any future increases in the rates provided and any future changes to pertinent service terms.

Please provide the requested information in compliance with the time frames set out in section 49 U.S.C. § 11101 and 49 CFR Part 1300.

Sincerely,

Marty Cove
Manager, Logistics
Canexus Chemicals Canada LP



Denis J. Smith
Vice President Marketing
Industrial Products Business Unit

BNSF Railway Company
P. O. Box 961065
Fort Worth, Texas 76161-0065
2650 Lou Menk Drive, 3rd Floor
Fort Worth, Texas 76131-2830
tel 817 867-6724
fax 817 352-7455
denis.smith@bnsf.com

March 21, 2011

Marty Cove
Canexus Chemicals Canada LP
100 Amherst Ave
North Vancouver, BC V7H 1S4

Dear Mr. Cove:

I write in response to your March 2, 2011 letter to Brad Wyckoff requesting that BNSF provide Canexus common carrier rates for the transportation of chlorine from North Vancouver, British Columbia and Marshall, Washington to Kansas City, Missouri. We have established rates for the transportation of chlorine from North Vancouver and Marshall to Portland, Oregon and Spokane, Washington (contained in BNSF 90096). Because Portland and Spokane are locations fully equipped to handle the interchange of chlorine traffic from BNSF to Union Pacific, those rates enable Canexus to ship chlorine from either North Vancouver or Marshall to any final destinations located on the Union Pacific.

You have indicated that Canexus also wants BNSF to quote rates for the same traffic for interchange via Kansas City to destination points in Texas, Illinois and Arkansas served by UP. Unfortunately, we cannot respond to your request without specific details regarding the location of those final destination points in Texas, Illinois, and Arkansas. Please identify the exact destination facilities in Texas, Illinois and Arkansas so that we may review which carriers serve those facilities and all routing options for this TIH traffic.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis J. Smith", written in a cursive style.

Denis J. Smith



March 22, 2011

Denis J. Smith
BNSF Railway Company
P.O. Box 961065
Fort Worth, Texas
76161-0065

Dear Mr. Smith:

We are in receipt of your letter to Marty Cove dated March 21, 2011. Canexus respectfully disagrees that BNSF needs any additional information from Canexus in order to establish common carrier rates from North Vancouver and Marshall, Washington to Kansas City, Missouri for interchange with the Union Pacific Railroad Company. BNSF previously provided Canexus with a proposed rate from North Vancouver to Kansas City in February without any accompanying request for information concerning the ultimate destinations. BNSF then inexplicably withdrew this rate. Moreover, a rate for this lane was contained in BNSF 90096, Amendment 17, which expired on March 15, 2011. The parameters and circumstances surrounding this freight and routing have not changed in 2011, and they are substantially similar, if not identical to the parameters for movements from Marshall, Washington to the Kansas City interchange. We therefore disagree that the information BNSF now seeks is a valid prerequisite to responding to Canexus' March 2, 2011 request.

In addition, your request for specific information regarding the final destination points in Texas, Illinois and Arkansas asks for information concerning movements by other railroads that is subject to existing or pending contracts using Kansas City as the interchange. This information is not only confidential, it is also immaterial to our request for rates from BNSF for the portion of the overall movement it may participate in.

We therefore believe that BNSF has sufficient information for you to proceed as requested. We look forward to your immediate response to our request for common carrier rates from North Vancouver, British Columbia and Marshall, Washington to Kansas City, Missouri as stated originally in our letter dated March 2, 2011.

Yours truly,

Gina Jackson



Denis J. Smith
Vice President Marketing
Industrial Products Business Unit

BNSF Railway Company
P. O. Box 961065
Fort Worth, Texas 76161-0065
2650 Lou Menk Drive, 3rd Floor
Fort Worth, Texas 76131-2830
tel 817 867-6724
fax 817 352-7455
denis.smith@bnsf.com

April 8, 2011

Marty Cove
Canexus Chemicals Canada LP
100 Amherst Ave
North Vancouver, BC V7H 1S4

Dear Mr. Cove:

I write in response to your March 22 letter to me and your April 5 email to Howard Horn. We understand that Union Pacific's ongoing refusal to provide service from the established interchanges with BNSF at Portland, OR and Spokane, WA to UP-served final destinations has left Canexus in a difficult situation. In order to provide Canexus additional time to negotiate a solution with UP or make alternative arrangements with other carriers, BNSF will establish temporary rates for use in shipping chlorine from North Vancouver, B.C. and Marshall, WA to interchange with UP at Kansas City and movement to any final destinations located on UP. These rates will be effective only until June 30, 2011.

Effective July 1 and thereafter, any chlorine shipments moving on BNSF from N. Vancouver or Marshall to final destinations located on UP must be interchanged at Portland or Spokane. We believe that the publication of rates to Portland and Spokane, which are both established and reasonable locations for the interchange of TIH/PIH traffic with UP, fully satisfies our obligations with respect to this traffic. Our willingness to establish interim rates signifies the value we place on our ongoing commercial relationship with Canexus. If, after July 1, you anticipate that Union Pacific will not accept such traffic in interchange at these established and reasonable gateways, then your recourse would be to address that situation before the Surface Transportation Board.

To avoid any confusion, I also want to clarify one issue you have raised in prior correspondence. The rate that BNSF established on January 20 for the transportation of chlorine from N. Vancouver and Marshall to Kansas City was only for use on traffic with final destinations located on the BNSF. This is consistent with BNSF's unchanged position that we will fulfill our obligation to move Canexus's chlorine traffic to all BNSF-local final destinations. As Canexus was aware, that rate was not for use in conjunction with UP rates from Kansas City to UP-served final destinations. It is thus inaccurate to suggest that BNSF "inexplicably withdrew" a pre-existing rate upon which Canexus may have relied in arranging for transportation to UP-served final destinations beyond Kansas City.

Finally, it has come to my attention that on multiple recent occasions, Canexus has tendered chlorine shipments to BNSF for movement to locations for which BNSF has no established rate. I understand that these instances were not the result of clerical error but a conscious decision by Canexus to submit waybills to destinations for which Canexus knew no BNSF rate existed. This practice is unacceptable, contrary to BNSF and industry regulations, and, given the TIH/PIH nature of these shipments, creates dramatically increased safety and operational risks. BNSF will be taking all steps—administrative, operational or otherwise—to ensure that no shipments Canexus tenders will be permitted to move to destinations for which BNSF has not established a rate. Further, in the event that Canexus submits another shipment in this inappropriate manner, the above-referenced temporary rates BNSF has established for interchange with UP at Kansas City will immediately be rescinded.

Sincerely,

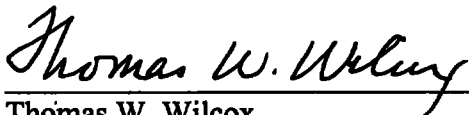
A handwritten signature in black ink, appearing to read "Denis J. Smith", with a stylized flourish at the end.

Denis J. Smith

CERTIFICATE OF SERVICE

I do hereby certify that I have delivered a true and correct copy of the foregoing Request for an Order Compelling Establishment of Common Carrier Rates to the following addressees at the address stated by express overnight courier this 25th day of May, 2011.

Richard E. Weicher
Jill K. Mulligan
BNSF RAILWAY COMPANY
2500 Lou Menk Drive
Fort Worth, TX 76131
(817) 352-2353


Thomas W. Wilcox